

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT

WILLIE PAUL VIGIL, JR.,

Plaintiff and Appellant,

v.

R. LOPEZ et al.,

Defendants and Respondents.

F070020

(Kings Super. Ct. No. 11C0339)

OPINION

APPEAL from a judgment of the Superior Court of Kings County. Donna L. Tarter, Judge.

Willie Paul Vigil, Jr., in pro. per., for Plaintiff and Appellant.

Kamala D. Harris, Attorney General, Jonathan L. Wolff, Assistant Attorney General, Misha D. Igra and Kathleen Boergers, Deputy Attorneys General, for Defendants and Respondents.

-ooOoo-

Plaintiff Willie Paul Vigil, Jr. (appellant), a California inmate, filed a tort action against Warden Lopez and three Corcoran State Prison correctional officers alleging that they intentionally and negligently took, broke or lost his personal property at or near the time period that he was transferred from Corcoran State Prison (Corcoran) to Kern Valley State Prison (Kern Valley) in 2010. Defendant Warden Lopez's demurrer to the first amended complaint was sustained without leave to amend by the trial court in May 2013. Lopez is no longer a party to this action. The remaining defendants filed a motion for judgment on the pleadings in December 2013, which the court granted without leave to amend in February 2014. Appellant appeals from that order and judgment. We affirm.

DISCUSSION

Pleadings

Appellant's original complaint was filed on October 4, 2011. Defendants filed a motion for judgment on the pleadings and a motion to strike, which was granted with leave to amend. Appellant filed an amended complaint on May 30, 2012, and another amended complaint on July 6, 2012. In December 2013, defendants filed a motion for judgment on the pleadings as to the amended complaint.¹ The court granted the motion without leave to amend, explaining that the documents attached to the amended complaint contradicted the pleading's allegation that he had exhausted administrative remedies. The court noted that the failure to exhaust administrative remedies is a jurisdictional requirement and therefore granted the motion without leave to amend.

The amended complaint consists of a four-page Judicial Council complaint form and more than 90 pages of attachments. The amended complaint essentially alleges that appellant was housed at Pleasant Valley State Prison (Pleasant Valley) in 2009,

¹ Defendants' motion for judgment on the pleadings does not specify which of the two amended complaints the motion is directed to. We assume the motion is directed to the amended complaint filed on July 6, 2012, but, as best we can determine, the two amended complaints are not different in any material respects.

transferred to Corcoran in 2010 and then to Kern Valley later in 2010. The pleading identifies defendants Pano, Bradley and Yale as the correctional officers at Corcoran who damaged or lost several items of appellant's personal property during the time that he was transferred from Corcoran to Kern Valley. The exhibits to his amended complaint include the written inmate grievances he submitted concerning these claims and the prison responses to those grievances.

Appellant filed a grievance on November 4, 2010, at Kern Valley. It alleged that the property officers at Corcoran improperly packaged his property. He received a response to this grievance at the informal level and did not pursue the grievance further.

Appellant submitted another grievance on November 16, 2010, this time with Pleasant Valley alleging that Corcoran property officers had not shipped all of his property and, due to improper packaging, his other property was broken or damaged. This grievance was partially granted at the first and second levels of review. Appellant received reimbursement for his missing television and a replacement typewriter. The prison's response expressly stated that it was limited to his claims against Pleasant Valley only.

On December 6, 2010, appellant submitted another inmate grievance to Pleasant Valley. He submitted his grievance to the third level of review at the Inmate Appeals Branch (IAB). The IAB screened out the grievance because appellant had inappropriately bypassed the lower levels of review, that is, had failed to follow the proper steps in pursuing his administrative remedies within the prison system.

Standard of Review

We review an order granting a judgment on the pleadings under a de novo standard of review. (*Gerawan Farming, Inc. v. Lyons* (2000) 24 Cal.4th 468, 515.) We review judicial action and not judicial reasoning. (*People v. Franklin* (2003) 105 Cal.App.4th 532, 535.)

Legal Principles Applicable to Judgment on the Pleadings

A motion for judgment on the pleadings may be made by a party or by the court on its own motion. (Code Civ. Proc., § 438, subd. (b).) One ground for granting a motion for judgment on the pleadings is that the pleading does not state facts sufficient to constitute a cause of action. (*Id.*, subd. (c).) The grounds for the motion shall appear on the face of the pleading. (*Id.*, subd. (d).) This includes exhibits attached to the complaint. (*Lumbermens Mut. Cas. Co. v. Vaughn* (1988) 199 Cal.App.3d 171, 178.) Facts appearing in exhibits attached to a complaint will be accepted as true and given precedence over contrary allegations in the pleading. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604; *Dodd v. Citizens Bank of Costa Mesa* (1990) 222 Cal.App.3d 1624, 1627.)

The Exhaustion Doctrine Applicable to State Prisoners

Prisoners must exhaust administrative remedies within the prison system before filing a court action. This exhaustion requirement is jurisdictional such that a court cannot hear a case before a litigant exhausts administrative remedies. (*Wright v. State of California* (2004) 122 Cal.App.4th 659, 664–668 (*Wright*).) The exhaustion requirement furthers several important societal and governmental interests, including promoting administrative autonomy, mitigating damages, and giving agencies opportunities to make factual findings, encouraging settlement, filtering out frivolous claims, fostering better prepared litigation, and promoting judicial economy. (*Id.* at p. 666.)

The prison system affords prisoners several levels of review regarding inmate grievances. The California Department of Corrections regulates this process through written regulations. (Cal. Code Regs., tit. 15, §§ 3084.5, 3084.7.) The process generally consists of four levels of review: an informal review, followed by three formal reviews. An inmate who has not completed the review process has not exhausted the available administrative remedies. (*Wright, supra*, 122 Cal.App.4th at pp. 666–667.) Even where

only monetary damages are sought, which the administrative process cannot provide, an inmate must exhaust his administrative remedies. (*Id.* at p. 668.)

The Motion for Judgment on the Pleadings was Properly Granted

Appellant's amended complaint fails to state a cause of action because the documents attached to his complaint establish that he failed to fully exhaust his administrative remedies. Appellant has also failed to present to the court any sound reason to believe that allowing a further amendment will cure the failure to exhaust remedies defect.

In his amended tort complaint and motion for the return of property, which he attached to his amended complaint, appellant alleges:

“On November 4, 2010, November 16, 2010, and December 6, 2010, [appellant] has appealed his CDC lawsuit SHU property appeals and has officially exhausted those property appeals actions to all the available levels of review of the State Department of Corrections administrated remedies. See (Exhibit ‘K’.)”

If his complaint had said nothing further about his grievances or his efforts to prosecute his complaints administratively, the allegation that he exhausted all remedies would have sufficed to withstand a motion for judgment on the pleadings. However, appellant's amended complaint attached and incorporated numerous documents, including the grievances that he filed and the prison's responses to those grievances. Those documents demonstrate that he has *not* exhausted his administrative remedies. The court is not bound to accept his conclusory pleading allegation when there are exhibits to a complaint that contradict that allegation. (*Del E. Webb Corp. v. Structural Materials Co.*, *supra*, 123 Cal.App.3d at p. 604; *Dodd v. Citizens Bank of Costa Mesa*, *supra*, 222 Cal.App.3d at p. 1627.)

Appellant's amended complaint includes exhibit No. K, which contains three grievance forms dated November 4, November 16, and December 6, 2010. The documentation shows that appellant withdrew the November 4, 2010, grievance after

receiving only an informal level of review. He then filed a grievance with Pleasant Valley dated November 16, 2010. The second level appeal response states that the grievance was accepted for review only as to “the issues that pertain to [Pleasant Valley].” The amended complaints’ allegations of wrongdoing are directed at the conduct of three named correctional officers employed at Corcoran, not at Pleasant Valley. The response also states that issues regarding staff at Corcoran need to be addressed by Corcoran appeals. Thus, appellant’s November 16, 2010, grievance filed at Pleasant Valley did not exhaust remedies as to defendants Pano, Bradley and Yale, since they never proceeded to any level of review at Corcoran State Prison, where the alleged misconduct occurred.

The December 6, 2010, grievance was also submitted at Pleasant Valley. It was not submitted to the first (informal) level of review. Instead, it was submitted for a formal-level review at both the first and second levels. Two months later, appellant requested a director’s level review. Because he submitted these requests by bypassing the required lower levels of review, the IAB rejected the grievance pursuant to California Code of Regulations, title 15, section 3084.6, subdivision (b)(15). Notwithstanding that he was informed of this shortcoming and despite the fact that he did not exhaust all of the remedies concerning this third grievance, he filed suit.²

The remaining named defendants were, at all relevant times, correctional officers at Corcoran. Appellant’s claims against these defendants pertain to conduct occurring at

² Appellant attempted to submit further documents with his amended opposition to the motion for judgment on the pleadings in support of his contention that he had exhausted his remedies. The trial court correctly rejected this attempt because of his failure to comply with California Rules of Court, rule 3.1113(d) (exceeding 15-page limit). (*Quantum Cooking Concepts, Inc. v. LV Associates, Inc.* (2011) 197 Cal.App.4th 927, 932.) In any event, the additional documents contained in appellant’s opposition and amended reply were not part of his amended complaint and, therefore, could not be considered in ruling on the motion for judgment on the pleadings. Finally, as defendants point out, these documents further support the court’s conclusion that appellant failed to exhaust his administrative remedies and, therefore, failed to state a cognizable claim.

Corcoran. As a prerequisite to filing suit, he was required to file a grievance against those defendants at Corcoran and pursue all four levels of review. He did not do so, as is shown by the exhibits attached to his amended complaint. His failure to complete these four levels of review precludes him from filing a court action against these defendants.

The Motion Was Properly Granted Without Leave to Amend

It is the plaintiff's burden to demonstrate a reasonable possibility to demonstrate that the defect can be cured by amendment. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318 [applying to orders sustaining demurrer].) Appellate courts conduct a de novo review of a trial court's order sustaining a demurrer without leave to amend. (*Kong v. City of Hawaiian Gardens Redevelopment Agency* (2002) 108 Cal.App.4th 1028, 1038.) We apply the same rule to a motion granting judgment on the pleadings without leave to amend.

In light of the documents attached to appellant's pleading that show he failed to exhaust his administrative remedies within the prisoner appeal process, and because the law requires that those administrative remedies be first exhausted before suit can be filed, there is no reasonable possibility that this defect could be cured by amendment.

Conclusion

The trial court properly granted defendants' motion for judgment on the pleadings without leave to amend.

DISPOSITION

The judgment is affirmed.

KANE, J.

WE CONCUR:

LEVY, Acting P.J.

DETJEN, J.